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UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF TEXAS
EL PASO DIVISION

Noelkis Adiren Llano Delgado
Petitioner,

v.

Markwayne Mullin, Secretary of the United States Department of Homeland Security, in his official capacity; Warden of the El Paso Processing Center, in their official capacity,
Respondents.

Case No.

Agency No. [redacted]

PETITION FOR WRIT OF HABEAS CORPUS UNDER 28 U.S.C. § 2241

INTRODUCTION

1. Petitioner Noelkis Adiren Llano Delgado has been confined in civil immigration detention since March 13, 2026, after living outside immigration custody for more than six years pursuant to DHS's own prior decision to release her on immigration bond. DHS re-detained Petitioner after a March 2026 arrest for driving while intoxicated, but no neutral decisionmaker has determined that the arrest establishes a present need for continued civil confinement. Nearly six months later, Petitioner remains incarcerated while her removal proceedings continue, without an

individualized determination that her detention is necessary to prevent flight or protect the community.

2. Petitioner does not conceal the circumstances preceding her re-detention. On March 5, 2026, the Odessa Police Department arrested her for driving while intoxicated, and ICE lodged an immigration detainer while she remained at the Ector County Detention Center. On March 13, 2026, local authorities released Petitioner to the ICE detainer, and ICE transported her to its Midland Sub-Office for immigration processing. DHS's March 13, 2026 Form I-213 identified the DWI disposition as pending when ICE assumed custody.

3. The March arrest permitted DHS to reassess Petitioner's custody; it did not adjudicate whether months of renewed civil incarceration were necessary. DHS had previously released Petitioner on immigration bond and she thereafter remained outside immigration detention for more than six years. DHS's own 2026 Form I-213 acknowledges her prior release on bond, and the earlier immigration record contains the bond documentation itself.

4. Petitioner challenges the Government's continued deprivation of that established liberty without constitutionally adequate process. Her claim does not depend on denying DHS statutory authority to detain under 8 U.S.C. § 1225(b)(2)(A). *Buenrostro-Mendez v. Bondi*, 166 F.4th 494 (5th Cir. 2026), controls the statutory classification question in this Circuit, but it did not decide whether the Fifth Amendment permits prolonged re-detention without individualized review of the factual necessity for continued confinement.

5. The constitutional question has become concrete during Petitioner's detention. When the Government responded to Petitioner's earlier pro se habeas action on May 21, 2026, it characterized prolonged detention as speculative and relied on the expected progress of her removal proceedings. Those proceedings remain unresolved, have been repeatedly rescheduled, and Petitioner remains detained as of the filing of this Petition. The current EOIR record identifies her as detained and reflects an Individual Hearing scheduled for August 31, 2026.

6. The Government cannot justify Petitioner's present confinement solely by establishing that § 1225(b)(2)(A) authorizes detention. Civil detention implicates the fundamental liberty interest in freedom from physical restraint, and statutory detention authority remains subject to constitutional limitations. Petitioner seeks habeas relief because the Government has converted a March 2026 criminal arrest into months of civil incarceration without an individualized adjudication establishing that her continued detention remains necessary.

PARTIES

7. Petitioner NOELKIS ADIREN LLANO DELGADO is a native and citizen of Cuba. She is presently confined by U.S. Immigration and Customs Enforcement at the El Paso Service Processing Center, 8915 Montana Avenue, El Paso, Texas 79925. Petitioner is therefore "in custody" within the meaning of 28 U.S.C. § 2241.

8. Respondent WARDEN OF THE EL PASO SERVICE PROCESSING CENTER is Petitioner's immediate custodian and exercises day-to-day control over her physical confinement. Respondent is sued solely in his or her official capacity and has authority to effectuate Petitioner's release pursuant to an order of this Court.

JURISDICTION AND VENUE

9. This Court has jurisdiction under 28 U.S.C. § 2241 because Petitioner is in federal custody and alleges that her continued detention violates the Fifth Amendment. The writ of habeas corpus reaches claims challenging the legal and constitutional authority for present physical confinement. Petitioner does not ask this Court to adjudicate removability, determine eligibility for asylum or adjustment of status, review an immigration judge's merits decision, or terminate her removal proceedings.

10. Venue is proper in the Western District of Texas because Petitioner is physically confined at the El Paso Service Processing Center within this District. Her immediate custodian is located within this District, and this Court can provide effective habeas relief by directing her release from present custody.

11. The jurisdictional restrictions governing review of removal orders do not bar this action because Petitioner challenges detention independent of the merits of her removal proceedings. Nor does 8 U.S.C. § 1226(e) foreclose review because Petitioner does not ask this Court to review a discretionary custody judgment. Her claim is that continued physical confinement without constitutionally adequate individualized process violates the Fifth Amendment.

PRIOR FEDERAL HABEAS PROCEEDING

12. On May 15, 2026, while proceeding without counsel, Petitioner filed a petition for writ of habeas corpus in this Court challenging her detention. *Llano Delgado v. Field Office Director*, No. 3:26-cv-01384-LS (W.D. Tex.). The Court ordered service on

May 18, 2026, and the Government filed its response on May 21, 2026. Undersigned counsel entered an appearance on Petitioner's behalf on August 30, 2026.

13. Petitioner voluntarily dismissed that action without prejudice before filing this Petition. The prior petition was prepared pro se approximately two months after Petitioner's re-detention and principally disputed the Government's statutory detention authority under § 1225(b)(2)(A). During the months that followed, Petitioner's detention materially lengthened, her removal proceedings remained unresolved, and intervening Fifth Circuit and Western District of Texas authority substantially developed the constitutional issues governing detention under § 1225(b)(2)(A).

14. This counseled Petition presents Petitioner's current detention on the materially developed factual and legal record. It acknowledges the statutory holding of *Buenrostro-Mendez* and presents the independent constitutional question that remains after that decision. No other federal habeas action challenging Petitioner's present detention is pending.

FACTUAL BACKGROUND

15. Petitioner entered the United States near El Paso, Texas, on May 31, 2019, without inspection. DHS initially processed her under 8 U.S.C. § 1225 and charged her as inadmissible under 8 U.S.C. § 1182(a)(7)(A)(i)(I). The contemporaneous 2019 immigration record reported no prior criminal history.

16. Petitioner expressed fear of returning to Cuba and received a credible-fear interview on July 15, 2019. The asylum officer found that Petitioner established a credible fear of persecution based on political opinion. Her immigration proceedings thereafter continued in the United States.

17. DHS did not maintain Petitioner in continuous immigration detention. The EOIR record establishes that Petitioner sought bond in August 2019 and that the Immigration Judge entered a new bond amount on August 28, 2019. DHS's own March 2026 I-213 independently confirms that Petitioner was thereafter released on immigration bond.

18. Petitioner thereafter remained outside immigration detention for more than six years while her removal proceedings continued. She established substantial family and community ties in the United States and continued pursuing immigration relief. Her pending proceedings include an asylum claim, and the record also reflects a pending Form I-130 filed on her behalf.

19. Petitioner's years in the community were not free of criminal conduct, and this Petition does not represent otherwise. Her criminal history is relevant to any individualized assessment of custody, but no tribunal has determined that her history requires her present and continued civil immigration confinement.

20. On March 5, 2026, Odessa Police arrested Petitioner for driving while intoxicated. ICE's Criminal Apprehension Program encountered Petitioner at the Ector County Detention Center and lodged an immigration detainer against her. DHS's I-213 records the DWI disposition as pending as of March 13, 2026.

21. On March 13, 2026, Petitioner was released from local custody to the ICE detainer. ICE transported her to the ERO Midland Sub-Office, processed her for immigration detention, and subsequently transferred her to the El Paso Service Processing Center. DHS's I-213 charged her administratively under 8 U.S.C. § 1182(a)(6)(A)(i) and stated that she would remain at the El Paso Processing Center awaiting her immigration hearing.

22. Petitioner has remained continuously confined in ICE custody since March 13, 2026. Her removal proceedings have continued during that confinement and have been repeatedly rescheduled. The EOIR record reflects that the July 6, 2026 Individual Hearing was continued, the July 22 hearing was subsequently continued, and another Individual Hearing was scheduled for August 31, 2026.

23. The Government therefore possesses evidence it may invoke to support reconsideration of Petitioner's prior release, including the March 2026 DWI arrest and her earlier criminal dispositions. What has never occurred is an individualized adjudication establishing that those circumstances require Petitioner's continued civil incarceration months after ICE assumed custody. The existence of information relevant to custody makes meaningful individualized review more important because a neutral decisionmaker can evaluate that evidence against Petitioner's years of prior liberty, family ties, immigration history, current circumstances, and available conditions of release.

24. DHS's position has been categorical. In responding to Petitioner's earlier habeas petition, the Government maintained that *Buenrostro-Mendez* places Petitioner under § 1225(b)(2)(A), that detention under that provision is mandatory, and that dangerousness and flight risk are legally irrelevant because the statute does not provide a bond hearing. The Government therefore defended Petitioner's confinement without asserting that any tribunal had actually determined that this Petitioner presently requires detention because she is dangerous or likely to flee.

25. Petitioner's detention has now continued far beyond the factual posture addressed by the Government in May 2026. At that time, the Government characterized any claim

of prolonged detention as speculative and emphasized that removal proceedings were moving toward an upcoming hearing. Those proceedings remain unresolved more than three months later, while Petitioner continues to lose her physical liberty each day without individualized review.

THE CURRENT LEGAL FRAMEWORK

26. Petitioner recognizes that *Buenrostro-Mendez v. Bondi*, 166 F.4th 494 (5th Cir. 2026), controls the statutory classification question. Under *Buenrostro-Mendez*, a noncitizen physically present in the United States who entered without inspection may remain an applicant for admission subject to § 1225(b)(2)(A). This Petition therefore does not ask the Court to hold that § 1226(a) governs Petitioner merely because ICE re-detained her after years of physical presence in the interior.

27. *Buenrostro-Mendez* does not resolve this Petition. Statutory authorization to detain and the constitutional permissibility of continued detention are distinct questions, and the Fifth Amendment remains applicable to the Government's exercise of civil detention authority. Petitioner challenges the continued deprivation of physical liberty after years of prior release and months of renewed confinement without any individualized determination that incarceration remains necessary.

28. The Government's own position demonstrates the constitutional problem. It maintains that no individualized custody determination can occur because § 1225(b)(2)(A) makes flight risk and dangerousness irrelevant to statutory detention. Petitioner therefore remains confined not because a tribunal considered the DWI arrest, her misdemeanor record, her six years outside immigration detention, her family ties, her immigration proceedings, and possible conditions of release and determined that

incarceration is necessary, but because the Government maintains that no such determination may occur at all.

29. The Due Process Clause does not permit the statutory classification itself to become a substitute for constitutional review of prolonged physical confinement. Freedom from bodily restraint lies at the core of the liberty protected by the Fifth Amendment. *Zadvydas v. Davis*, 533 U.S. 678, 690 (2001). The constitutional inquiry therefore concerns whether the Government may continue depriving this Petitioner of that liberty for months without ever establishing an individualized necessity for doing so.

THE FIFTH CIRCUIT'S PENDING EN BANC PROCEEDING DOES NOT FORECLOSE THIS PETITION

30. On July 2, 2026, a Fifth Circuit panel decided *Sosnava Rodriguez v. Ortega*, No. 26-50183, and addressed the constitutional limits on mandatory detention under § 1225(b)(2)(A). On July 10, 2026, the Fifth Circuit granted rehearing en banc on its own motion and expressly vacated the panel opinion pursuant to Fifth Circuit Rule 41.3. Petitioner therefore does not rely on the July 2 panel opinion as binding precedent. *Sosnava Rodriguez v. Ortega*, No. 26-50183 (5th Cir. July 10, 2026).

31. On July 21, 2026, the en banc Fifth Circuit entered a published order granting the Government's motion to stay the three district-court judgments involved in the consolidated appeals pending rehearing en banc. The order stays those judgments but contains no merits analysis and does not direct district courts to stay unrelated habeas petitions presenting constitutional challenges to § 1225(b)(2)(A) detention. *Sosnava Rodriguez v. Ortega*, 2026 WL 2104747 (5th Cir. July 21, 2026) (en banc).

32. District courts in the Western District of Texas have continued adjudicating these constitutional claims after the July 21 stay. In *Lerma-Huipio v. Mullin*, No. 1:26-CV-1766-RP, 2026 WL 2379406 (W.D. Tex. Aug. 18, 2026), Judge Robert Pitman considered the en banc stay and concluded that it did not prohibit resolution of pending § 2241 petitions. The court relied on *Tiquiram v. Warden, Dilley Immigration Processing Center*, No. SA-26-CV-04473-OLG, 2026 WL 2242499 (W.D. Tex. July 31, 2026), *Estrada v. Ybarra*, No. 26-CV-1897-KC, 2026 WL 2168090 (W.D. Tex. July 28, 2026), and *Camacho v. Department of Homeland Security*, No. 26-CV-01717-DB, 2026 WL 2137156 (W.D. Tex. July 24, 2026), which likewise declined to infer from the stay an unexpressed prohibition against adjudicating separate habeas petitions.

33. *Lerma-Huipio* also addressed the effect of *Buenrostro-Mendez* directly. The court recognized that *Buenrostro-Mendez* rejected the prior statutory interpretation under which long-resident noncitizens were treated as detained under § 1226(a), but held that *Buenrostro-Mendez* "addressed only statutory interpretation" and did not decide whether continued detention without individualized custody review violates the Constitution. The court reached the independent Fifth Amendment claim, found the detention unlawful, granted the § 2241 petition, and ordered the petitioner immediately released. *Lerma-Huipio*, 2026 WL 2379406.

34. Six days later, Judge Pitman again granted habeas relief in *Ortiz Garcia v. Ortega*, No. 1:26-CV-2149-RP (W.D. Tex. Aug. 24, 2026). The court again concluded that the Fifth Circuit's July 21 stay did not prevent adjudication of an independent habeas petition and rejected the Government's argument that § 1225(b)(2)(A) eliminated the

constitutional claim. The court ordered immediate release and prohibited renewed detention absent an individualized hearing at which the Government would bear the burden of establishing dangerousness or flight risk by clear and convincing evidence.

35. These decisions do not bind this Court, but they address the same Fifth Circuit developments that govern this Petition and confirm that neither *Buenrostro-Mendez* nor the July 21 stay resolves the constitutional question presented here. Petitioner asks this Court to decide that question under existing Fifth Amendment law while the en banc proceeding remains pending. The Fifth Circuit has scheduled *Sosnava Rodriguez* for its September 2026 en banc session, but no en banc merits decision has issued.

EXHAUSTION DOES NOT BAR REVIEW

36. Section 2241 contains no statutory exhaustion requirement applicable to this Petition. Any judicially imposed exhaustion requirement is excused where the administrative process cannot provide the relief sought or resort to that process would be futile. Here, the Government's own interpretation of § 1225(b)(2)(A) and *Matter of Yajure Hurtado*, 29 I. & N. Dec. 216, 225 (BIA 2025), is that an Immigration Judge lacks authority to grant bond to a person in Petitioner's statutory category.

37. The Government asserted that precise position in Petitioner's prior federal action. It argued that Petitioner is mandatorily detained under § 1225(b)(2)(A), that Immigration Judges lack authority to hear bond requests for persons in that category, and that dangerousness and flight risk are irrelevant to the statutory detention determination. Requiring Petitioner to pursue administrative custody review while the Government maintains that no Immigration Judge possesses authority to conduct that review would accomplish nothing beyond prolonging the challenged deprivation.

38. *Lerma-Huipio* rejected the same exhaustion argument. Because the Government asserted that detention was mandatory and that no Immigration Judge could review custody, the court held that requiring administrative exhaustion would be futile. *Ortiz Garcia* subsequently reached the same conclusion where the Government simultaneously demanded exhaustion and maintained that *Yajure Hurtado* deprived the Immigration Judge of authority to grant the requested custody relief.

39. Petitioner also challenges a constitutional deprivation that the immigration court cannot remedy under the Government's own interpretation of governing law. She does not seek appellate review of an Immigration Judge's discretionary bond determination. She challenges the legality of months of present physical confinement without any tribunal authorized to determine whether continued incarceration is individually necessary.

CLAIM ONE

PETITIONER'S RE-DETENTION AFTER MORE THAN SIX YEARS OF LIBERTY WITHOUT INDIVIDUALIZED PROCESS VIOLATES THE FIFTH AMENDMENT

40. Petitioner's claim begins with the liberty the Government actually restored. DHS initially detained Petitioner in 2019, processed her immigration case, and subsequently authorized her release through an immigration delivery bond. She thereafter remained outside immigration detention for more than six years before ICE again took custody of her in March 2026.

41. The March 2026 DWI arrest constituted new information that DHS could legitimately consider in reassessing Petitioner's custody. It did not establish that renewed immigration detention was constitutionally necessary, and it did not determine how

long any renewed confinement should continue. Those questions require consideration of Petitioner's actual circumstances, including the conduct underlying the arrest, her criminal history, her years outside immigration detention, her family and community ties, her immigration proceedings, and whether conditions short of incarceration can reasonably address the Government's interests.

42. No individualized adjudication of those questions preceded or followed the deprivation challenged here. Petitioner moved directly from local custody into ICE detention on March 13, 2026 and has remained confined ever since. The Government's categorical position under § 1225(b)(2)(A) eliminates the very inquiry capable of determining whether the changed circumstances that prompted renewed custody justify continuing to imprison Petitioner months later.

43. The private interest is exceptionally substantial because the Government deprived Petitioner of physical liberty after more than six years outside immigration detention. "Freedom from imprisonment—from government custody, detention, or other forms of physical restraint—lies at the heart of the liberty" protected by due process. *Zadvydas v. Davis*, 533 U.S. 678, 690 (2001). Petitioner's prior release does not immunize her from lawful re-detention, but it is directly relevant to the process constitutionally required when the Government extinguishes an established period of liberty.

44. The risk of erroneous deprivation is substantial because the existing process contains no individualized mechanism for distinguishing a person whose circumstances require renewed detention from one who can safely remain in the community subject to conditions. Petitioner's DWI arrest and misdemeanor assault history are facts that a

decisionmaker may weigh; they are not substitutes for the decision itself. Treating the existence of adverse information as conclusive eliminates consideration of its nature, disposition, age, relationship to present dangerousness, and whether conditions of release adequately address any demonstrated risk.

45. Additional process would have direct value because an individualized proceeding can test the Government's asserted need for continued confinement against Petitioner's actual record. It can consider the Government's evidence concerning the DWI arrest and prior criminal conduct together with Petitioner's years outside immigration detention, family support, pending immigration proceedings, and available release conditions. That inquiry does not prevent DHS from detaining Petitioner when the evidence establishes that confinement is necessary; it prevents categorical detention from replacing an individualized determination where a fundamental liberty interest is at stake.

46. The Government's interest in immigration enforcement does not require dispensing with that process. Petitioner's removal proceedings continued for years while she lived outside immigration detention and can continue following release. An individualized custody determination would neither confer lawful status nor impair DHS's authority to pursue removal, and reasonable conditions can protect the Government's legitimate interests without automatically imposing incarceration.

47. Application of the factors identified in *Mathews v. Eldridge*, 424 U.S. 319, 335 (1976), therefore requires meaningful individualized process. Petitioner's physical liberty carries extraordinary weight, categorical detention creates a substantial risk that confinement will continue without present necessity, individualized review directly

addresses that risk, and the Government retains full authority to establish that detention is warranted when the evidence supports it. Months of incarceration without that review cannot be justified solely by identifying the statute that initially authorizes custody.

CLAIM TWO

PETITIONER'S CONTINUED DETENTION WITHOUT AN INDIVIDUALIZED DETERMINATION HAS BECOME CONSTITUTIONALLY EXCESSIVE

48. Petitioner's continued detention presents an independent constitutional violation even apart from the process accompanying her March re-detention. She has remained in ICE custody continuously since March 13, 2026 while her removal proceedings continue through repeated hearing dates. Nearly six months of physical confinement have now elapsed without an individualized determination that continued detention remains necessary.

49. The Government previously characterized prolonged detention as speculative because Petitioner had been detained for approximately two months and an Individual Hearing was then scheduled for July 6, 2026. That factual premise no longer exists. July 6 passed without resolution of the proceedings, subsequent hearing dates followed, and Petitioner remained incarcerated throughout that period.

50. *Demore v. Kim*, 538 U.S. 510 (2003), does not establish that every period of mandatory immigration detention remains constitutionally permissible until removal proceedings end. *Demore* sustained detention during the limited period necessary to complete removal proceedings and distinguished the potentially indefinite confinement addressed in *Zadvydas*. Petitioner's challenge concerns the constitutional

consequences of detention as it actually continues, not the statutory authority to initiate detention.

51. Petitioner's detention is civil and must remain reasonably related to legitimate immigration purposes. The Government may protect against flight and danger, but it has never established through individualized adjudication that this Petitioner presently requires incarceration to accomplish either purpose. The longer confinement continues without such review, the greater the risk that statutory detention operates as incarceration based on status alone rather than a measure reasonably connected to an actual present governmental need.

52. The March DWI arrest does not eliminate that constitutional inquiry. A criminal arrest may provide relevant evidence concerning custody, but criminal conduct ordinarily is addressed through the criminal justice system, where the State determines the appropriate criminal consequences. Civil immigration detention serves distinct regulatory purposes and cannot become an additional period of incarceration imposed without determining whether continued physical restraint serves those purposes.

53. Petitioner's earlier criminal history likewise belongs in an individualized assessment, not outside one. The felony aggravated-assault prosecutions were dismissed after Petitioner entered pleas to lesser misdemeanor assault offenses. The constitutional question is not whether Petitioner has an unblemished record; it is whether the Government may continue incarcerating her civilly for months without any decisionmaker evaluating the actual record and determining that present confinement remains necessary.

54. Recent decisions within this District confirm that prolonged § 1225(b)(2)(A) detention remains subject to constitutional review after *Buenrostro-Mendez*. In *Lerma-Huipio*, the court held that *Buenrostro-Mendez* resolved statutory interpretation but did not foreclose the independent Due Process Clause challenge, found the continued detention unconstitutional, and ordered immediate release. The court further ordered that any future detention be preceded by an individualized hearing at which the Government must establish dangerousness or flight risk by clear and convincing evidence.

55. *Ortiz Garcia* reached the same conclusion on August 24, 2026, after the Fifth Circuit had granted rehearing en banc in *Sosnava Rodriguez* and stayed the judgments before it. The court did not treat the stay as a merits determination and ordered the petitioner immediately released. These post-stay decisions demonstrate that district courts remain responsible for adjudicating the constitutionality of present confinement while the Fifth Circuit considers the broader question en banc.

IMMEDIATE RELEASE IS THE APPROPRIATE HABEAS REMEDY

56. Petitioner seeks release from unlawful physical custody, the traditional function of the writ of habeas corpus. Where continued detention itself violates the Constitution, release remedies the existing deprivation. *Munaf v. Geren*, 553 U.S. 674, 693 (2008), recognizes release as the ordinary remedy for unlawful detention.

57. Immediate release is particularly appropriate because the constitutional injury has already occurred and continues each day. A future administrative hearing cannot restore the months of liberty Petitioner has already lost without individualized process.

Release returns Petitioner to the community while leaving every aspect of her removal proceedings intact and permits DHS to impose lawful conditions designed to ensure compliance.

58. *Lerma-Huipio* applied that remedy on August 18, 2026, expressly concluding that release was appropriate after finding continued immigration detention unconstitutional. The court ordered immediate release under conditions no more restrictive than those preceding the challenged detention and prohibited renewed detention without an individualized hearing.

59. Petitioner's re-detention history makes that remedy particularly appropriate here. She is not asking the Court to create an untested community placement after continuous immigration custody since entry. DHS previously released her on immigration bond, and she spent more than six years outside immigration detention before the March 2026 event that led ICE to reassume custody. The Constitution permits DHS to respond to changed circumstances, but it does not permit months of renewed civil incarceration without individualized process determining that continued confinement remains necessary.

THE GOVERNMENT'S ENTRY-FICTION ARGUMENT DOES NOT RESOLVE THE CONSTITUTIONALITY OF PETITIONER'S PRESENT DETENTION

60. In the prior action, the Government relied on *Department of Homeland Security v. Thuraissigiam*, 591 U.S. 103 (2020), *Shaughnessy v. United States ex rel. Mezei*, 345 U.S. 206 (1953), and *Kaplan v. Tod*, 267 U.S. 228 (1925), to argue that a person who has never been formally admitted receives only the process Congress provided. The Government extended that principle to Petitioner despite her years of physical

presence and prior release on immigration bond. That argument addresses her immigration classification but does not eliminate the constitutional protection against unjustified physical confinement.

61. Petitioner does not invoke her years in the United States to establish lawful admission or defeat her classification under § 1225(b)(2)(A). Her physical presence and prior release matter because this Petition challenges incarceration, not exclusion or entitlement to enter the United States. DHS itself released Petitioner from immigration detention and restored her physical liberty for more than six years before taking that liberty away in March 2026.

62. *Thuraissigiam* did not involve a person seeking release from prolonged civil detention after years of government-authorized liberty. The petitioner there challenged expedited-removal procedures after being apprehended shortly after unlawfully crossing the border and sought additional review of his asylum claim. 591 U.S. at 114–17. Petitioner seeks no judicial determination concerning admission, asylum, or removal and asks only whether the Government may continue physically confining her without individualized justification.

63. *Mezei* likewise does not establish that every person legally classified as an applicant for admission may be incarcerated throughout removal proceedings without constitutional limitation. The Supreme Court considered an excluded noncitizen stopped upon return from abroad who could not be admitted and whom other countries refused to accept. 345 U.S. at 208–09. Petitioner was living inside the United States pursuant to DHS's prior release decision when the circumstances leading to her present detention arose.

64. The Government's position would make the duration and circumstances of physical confinement constitutionally irrelevant whenever § 1225(b)(2)(A) applies. That position cannot be reconciled with the Supreme Court's recognition that civil immigration detention presents a serious constitutional concern because freedom from government custody lies at the heart of protected liberty. *Zadvydas*, 533 U.S. at 690. *Buenrostro-Mendez* determines the statute governing Petitioner's custody but does not transform that statutory classification into an unlimited constitutional authorization for confinement.

THE GOVERNMENT'S RELIANCE ON CONNECTICUT DEPARTMENT OF PUBLIC SAFETY DOES NOT DEFEAT PETITIONER'S CLAIM

65. The Government previously relied on *Connecticut Department of Public Safety v. Doe*, 538 U.S. 1 (2003), arguing that dangerousness and flight risk are irrelevant because § 1225(b)(2)(A) does not make those facts statutory prerequisites to detention. It therefore characterized an individualized custody hearing as a "bootless exercise." That reasoning confuses the statutory criteria authorizing detention with the constitutional justification required for continued deprivation of physical liberty.

66. *Doe* involved a sex-offender registration statute triggered by the historical fact of conviction. The plaintiff sought a hearing to prove that he was not currently dangerous even though current dangerousness had no bearing on the statutory registration obligation. 538 U.S. at 4–8. The case did not involve physical incarceration, prolonged civil detention, or the constitutional safeguards applicable when the Government confines a person's body.

67. Petitioner does not seek a hearing to dispute whether she entered without inspection or whether *Buenrostro-Mendez* places her within § 1225(b)(2)(A). She accepts those statutory premises for purposes of this Petition. The individualized facts at issue concern whether continued physical confinement remains constitutionally permissible after more than six years of prior liberty and nearly six months of renewed detention.

68. The Government's argument would permit Congress to eliminate procedural scrutiny of physical confinement simply by making detention categorical and declaring individualized necessity irrelevant to the statute. The Fifth Amendment supplies an independent constitutional limitation on the exercise of statutory detention authority. The constitutional relevance of dangerousness, flight risk, and less restrictive conditions therefore does not depend on Congress expressly incorporating those considerations into § 1225(b)(2)(A).

DEMORE DOES NOT AUTHORIZE PETITIONER'S CONTINUED DETENTION WITHOUT INDIVIDUALIZED REVIEW

69. The Government also relied on *Demore v. Kim*, 538 U.S. 510 (2003), to defend mandatory detention throughout removal proceedings. *Demore* upheld detention under § 1226(c) during the limited period necessary to complete removal proceedings and emphasized the finite duration of the detention before it. 538 U.S. at 529–31. The decision did not hold that the Government may maintain civil confinement for whatever period proceedings ultimately consume without constitutional scrutiny.

70. Petitioner's circumstances materially differ from the categorical premise on which the Government relies. She lived outside immigration detention for more than six years

pursuant to DHS's own bond decision before ICE re-detained her, and her present confinement has continued for nearly six months while her immigration hearings have been repeatedly rescheduled. No individualized adjudication has determined that her incarceration remains necessary during that continuing process.

71. The Government's prior response asserted that Petitioner's detention had a definite termination point because § 1225(b)(2)(A) detention continues only during § 1229a proceedings. A statutory endpoint does not establish that every day of confinement before that endpoint is constitutionally permissible. The Due Process Clause requires examination of the actual deprivation when civil detention becomes substantial and continues without individualized review.

72. *Zadvydas* confirms that statutory detention authority cannot be considered independently from constitutional limitations on physical confinement. 533 U.S. at 689–90. Petitioner does not ask the Court to impose the six-month framework applicable to post-removal-order detention under § 1231(a)(6). She invokes *Zadvydas* for the established principle that civil immigration detention remains subject to the Fifth Amendment even where Congress has authorized custody.

PETITIONER'S CRIMINAL HISTORY DOES NOT SUPPLY THE MISSING INDIVIDUALIZED DETERMINATION

73. Petitioner acknowledges the criminal history relevant to any legitimate custody assessment. She does not ask the Court to evaluate her constitutional claim on a false premise of an unblemished record. Her history includes misdemeanor assault

convictions arising from prosecutions in which aggravated-assault charges were dismissed, and her March 2026 DWI arrest preceded the immigration re-detention challenged here.

74. Those facts demonstrate why individualized review is necessary. A neutral decisionmaker can consider the nature and disposition of the prior offenses, the circumstances and disposition of the DWI charge, Petitioner's conduct during more than six years outside immigration detention, her family and community ties, and the effectiveness of conditions short of incarceration. Categorical detention permits none of that evidence to determine whether present confinement is necessary.

75. The Government did not defend Petitioner's detention in the prior federal action on the ground that an adjudicator had found her dangerous. Its May 21 response did not identify the March DWI arrest as the factual justification for continued confinement and did not identify any individualized dangerousness determination. The Government defended detention because, in its view, § 1225(b)(2)(A) makes detention mandatory regardless of dangerousness or flight risk.

76. Petitioner therefore does not ask this Court to substitute its own assessment of dangerousness for that of an immigration tribunal. No tribunal has made the individualized determination that the Government says the statute does not permit. The constitutional defect is continued incarceration without any process capable of determining whether Petitioner's actual record warrants that deprivation of liberty.

CONCLUSION

Petitioner has now remained in civil immigration detention for nearly six months following more than six years of liberty after DHS released her on immigration bond. The March 2026

DWI arrest gave DHS a basis to reassess custody, but no individualized determination has established that the arrest, Petitioner's criminal history, or her present circumstances require continued incarceration. *Buenrostro-Mendez* establishes the statutory authority governing detention under § 1225(b)(2)(A), but it did not decide whether prolonged detention without individualized process satisfies the Fifth Amendment. Recent decisions from this District have continued to grant habeas relief on that constitutional ground after *Buenrostro-Mendez* and the Fifth Circuit's en banc stay in *Sosnava Rodriguez*. The Court should grant the writ because statutory authority to detain does not permit the Government to continue Petitioner's confinement without constitutionally adequate process.

PRAYER FOR RELIEF

Petitioner respectfully requests that this Court grant the Petition for Writ of Habeas Corpus under 28 U.S.C. § 2241, declare her continued detention without individualized process unconstitutional, and order Respondents to immediately release her from immigration custody subject to appropriate conditions of supervision. Petitioner further requests that Respondents be prohibited from re-detaining her based on the same circumstances absent constitutionally adequate individualized process, and that the Court grant any additional relief necessary to effectuate the writ.

Respectfully submitted,
Dated this 30th day of August, 2026.
By: */s/ Nera Shefer*
Nera Shefer, Esq.

EXHIBITS

Exhibit 1 – 2019 DHS Immigration Bond Records

Exhibit 2 – March 13, 2026 Form I-213

Exhibit 3 – Current EOIR Case Information and Hearing History

Exhibit 4 – *Lerma-Huipio v. Mullin*, No. 1:26-CV-1766-RP (W.D. Tex. Aug. 18, 2026), Order Granting Petition for Writ of Habeas Corpus

Exhibit 5 – *Ortiz Garcia v. Ortega*, No. 1:26-CV-2149-RP (W.D. Tex. Aug. 24, 2026), Order Granting Petition for Writ of Habeas Corpus.

VERIFICATION

I, Nera Shefer, counsel for Petitioner Noelkis Adiren Llano Delgado, have reviewed the Petition for Writ of Habeas Corpus and the records supporting the factual allegations contained therein. Pursuant to 28 U.S.C. § 2242, and based upon my review of those records and information obtained in the course of representing Petitioner, I verify that the factual allegations in the Petition are true and correct to the best of my knowledge, information, and belief. I declare under penalty of perjury pursuant to 28 U.S.C. § 1746 that the foregoing is true and correct.

Respectfully submitted,
Dated this 30th day of August, 2026.
By: */s/ Nera Shefer*
Nera Shefer, Esq.

CERTIFICATE OF SERVICE

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By: */s/ Nera Shefer*
Nera Shefer, Esq.